

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Lee Gill,

Civ. No. 12–03081 (DSD/JJG)

Petitioner,

v.

REPORT AND RECOMMENDATION

Bruce Rieser, Warden,

Respondent.

JEANNE J. GRAHAM, United States Magistrate Judge

This matter is before the Court on Respondent Bruce Rieser’s Motion to Dismiss Petition for Writ of Habeas Corpus (ECF No. 11). Respondent’s motion seeks to dismiss the petition only to the extent it names Minnesota Attorney General Lori Swanson as a party because the Court lacks jurisdiction over Attorney General Swanson.

The Petition in this matter did not actually name Attorney General Swanson as a respondent. It clearly names “Bruce Rieser, Warden,” as Respondent. Attorney General Swanson is included only as counsel for Rieser. Likewise, the Court’s Case Management/Electronic Case Filing system does not list Attorney General Swanson as a respondent. Accordingly, the Court recommends this motion be denied as moot.¹

¹ In the alternative, to the extent the Petition purports to name Attorney General Swanson as Respondent, the motion should be granted. It is well-settled that “[t]he federal habeas statute straightforwardly provides that the proper respondent to a habeas petition is ‘the person who has custody over the petitioner.’” *Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004) (quoting 28 U.S.C. § 2242; 28 U.S.C. § 2243)). That means the person who has “*immediate custody* of the party detained.” *Wales v. Whitney*, 114 U.S. 564, 574 (1885).

I. Recommendation

Based on all the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED** that Respondent Bruce Rieser's Motion to Dismiss (ECF No. 11) be **DENIED AS MOOT**.

Dated: August 6, 2013

s/ Jeanne J. Graham

JEANNE J. GRAHAM

United States Magistrate Judge

NOTICE

Pursuant to District of Minnesota Local Rule 72.2(b), any party may object to this Report and Recommendation by filing and serving specific, written objections by **August 26, 2013**. A party may respond to the objections within fourteen days after service thereof. Any objections or responses shall not exceed 3,500 words. The district judge will make a de novo determination of those portions of the Report and Recommendation to which objection is made.